DOCKET FILE COPY ORIGINAL

CC Docket #96-98
[redacted]

RECEIVED
AUG 12 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Request by ALTS for Clarification	)	CCB/CPD 97-30
of the Commission's Rules Regarding	)	
Reciprocal Compensation for	)	
Information Service Provider	)	
Traffic	)	

COMMENTS OF TELEPORT COMMUNICATIONS GROUP INC.

Teleport Communications Group Inc. ("TCG") supports ALTS' request for clarification that consumers' calls to information service providers ("ISPs") are local calls and therefore should be compensated under the reciprocal compensation terms described in the parties' interconnection agreements.

I. INTRODUCTION

The instant dispute arises as a result of recent efforts by local exchange carriers ("LECs") to avoid their contractual obligations to compensate competitive local exchange carriers ("CLECs") for terminating ISP local traffic pursuant to their reciprocal compensation agreements. The LECs' argument that ISP traffic is not subject to reciprocal compensation is nothing more than a regulatory smokescreen created to delay CLEC efforts to compete for ISP customers. The LECs brazenly make this attempt to evade their contractual obligations in spite of that fact that this Commission and the LECs themselves have consistently treated consumer calls to ISPs within a local calling area as local for purposes of determining the rates

2

that apply. Thus, TCG agrees with ALTS that the Commission should clarify that such calls are local for purpose of determining those rates.

II. A CALL FROM AN INDIVIDUAL END USER TO AN ISP IS A LOCAL CALL

The FCC has established that a consumer call to an ISP is a local call for purposes of determining rates that apply. This conclusion is based on two factors: first, ISPs have been classified as end users, not carriers, and second, the calls to an ISP are originated by a calling party (the ISP's customer) and terminated at the ISP end user premises within a local calling area.

A. ISPs Are Classified as End Users

Permitting LECs to require CLECs to provide them with free call termination service by refusing to pay CLECs for termination of calls to ISPs would be contrary to the historic treatment of ISPs as end users. In originally devising its access charge plan, the Commission exempted enhanced service providers ("ESPs"), of which ISPs are a sub-group, from interstate access charges.[1] In the ESP Exemption Order, the Commission later affirmed this policy, explaining that:

> Under our present rules, enhanced service providers are treated as end users for purposes of applying access charges. . . . Therefore, enhanced service providers generally pay local business rates and interstate subscriber line charges for their switched access connections to local exchange company central offices.[2]

---

1. MTS and WATS Market Structure, 97 FCC 2d 682, 711-22 (1983).

2. Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, 3 FCC Rcd 2631 at n.8 (1988) ("ESP Exemption Order") (emphasis added).

In its recent Access Charge Reform Order, the Commission reaffirmed this policy explaining that "ISPs may purchase services from LECs under the same intrastate tariffs available to end users. ISPs may pay business line rates and the appropriate subscriber line charge, rather than interstate access rates, even for calls that appear to traverse state boundaries."[3] The Commission also reasoned that ISPs did not appear to use the public switched network in a manner similar to IXCs, but their use of the network rather resembled the use made by other business customers whose calls terminate at the called party's premises. The Commission essentially affirmed the status of ISPs with respect to determining the rates that apply: these services provided to ISPs are to be treated as local calls.

B. An ISP Call Terminates at the End User ISP Premises within a Local Calling Area

LECs attempt to avoid the Commission's "end user" classification of ISPs by arguing that the call from the local customer does not terminate with the ISP, but instead continues on to the Internet. This characterization fails, however, because it does not recognize the two distinct segments that ultimately permit the local customer to access the Internet. In this segmented connection, depicted in the attached diagram, the local telephone call to the ISP is distinguishable from the

---

3. Access Charge Reform, First Report and Order, CC Docket 96-262, FCC 97-158 (rel. May 16, 1997), ¶¶ 341-48 ("Access Charge Reform Order"). The FCC explained that the terms ISP and enhanced service provider ("ESP") were synonymous. It observed that "'enhanced services' includes access to the Internet and other interactive computer networks" and thus for purposes of its Order said that "providers of enhanced services and providers of information services are ISPs." Id. at n.498.

subsequent connection from the ISP into and through the Internet. This first segment represents the basic service leg of the Internet connection. Enhanced services are provided on the second segment.

The local call — the first connection, which is the basic services call at issue here — is terminated at the ISP end user premises. Both the origination and termination occurs within the local calling area. In other words, the local call is completed when the ISP modem bearing the number called by the originating party "answers" the call. This local call completion is distinguishable from a long distance call, which never completes at the interexchange carrier's point of presence, but only when the called party "answers" the call.

The Commission itself has acknowledged this distinction in the Universal Service Order, explaining that:

> [w]hen a subscriber obtains a connection to an Internet service provider via voice grade access to the public switched network, that connection is a telecommunications service and is distinguishable from the Internet Service Provider's offering.[4]

Indeed, this description of the consumer call to the ISP premises illustrates the basis upon which the LECs have provided ISPs with connection to the public switched network under intrastate tariffs, as directed by the Commission and most recently affirmed in the Access Charge Reform Order.[5] Clearly, the nature of the

---

4. Federal-State Joint Board on Universal Service, Report and Order, CC Docket No. 96-45, FCC 97-147 (rel. May 8, 1997) at ¶ 789.

5. Access Charge Reform at ¶¶ 344-348. The Commission concluded that "the existing pricing structure for ISPs should remain in place" (¶ 344) and that (continued...)

ISP's subsequent provision of an enhanced service does not change the nature of the local call from the consumer to the ISP end user, and fits within the Commission's definition of "local telecommunications traffic" under Section 51.701(b)(1) of the rules.[6]

The Commission repeatedly has declined to require that ISP calls be subject to interexchange compensation mechanisms designed for long distance telephone service. This finding demonstrates that ISP traffic is subject to transport and termination arrangements described in the interconnection agreements. ISP traffic should not be excluded arbitrarily from these compensatory provisions.

III. STATE ARBITRATION DECISIONS PARALLEL THE FCC's CHARACTERIZATION OF ISP TRAFFIC AS LOCAL FOR THE PURPOSES OF RECIPROCAL COMPENSATION

Several state commissions have found that interconnection arrangements for local traffic apply to local calls terminating with ISP end users. As referenced in ALTS' letter, the New York Department of Public Service has stated that it is not inclined to depart from its treatment of ISP traffic as intrastate traffic. Similarly, the Oregon Public Utility Commission rejected US West's attempt to have ISP

5.(...continued)
"ISPs do pay for their connections to incumbent LEC networks by purchasing services under state tariffs" (¶ 346).

6. See 47 C.F.R. § 51.701(b)(1) ("For the purposes of this subpart, local telecommunications traffic means telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that originates and terminates within a local service area established by the state commission.").

traffic explicitly exempt from the reciprocal compensation agreement.[7] The Oregon Commission adopted the arbitrator's conclusion that "[t]here is no reason to depart from existing law or speculating what the FCC might ultimately conclude in a future proceeding,"[8] choosing instead to treat customer calls to ISPs as local calls for purposes of reciprocal compensation agreements.

The Minnesota Public Utilities Commission similarly held that:

> US West has failed to meet its burden of demonstrating the need to discriminate regarding the handling of ESP traffic. US West does not presently have different local rates for ESPs — it has shown no basis for imposing such discrimination on rates in this proceeding. US West has not shown that separating this traffic is required under the law or that it is technically feasible.[9]

Common in these conclusions is the recognition that LECs treat this traffic as local traffic. The conclusions of these state commissions are consistent with the Commission's historic treatment of services provided to ISPs and appropriately find that consumers' calls to ISPs should be included with other local traffic under reciprocal compensation arrangements. A similar conclusion issued now will prevent CLECs from being required to seek such rulings on a state-by-state basis.

---

7. Petition of MFS Communications Company, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions Pursuant to 47 U.S.C. Sec. 252(b) of the Telecommunications Act of 1996, ARB 1, Order No. 96-324, slip op. (Public Utilities Rpts., Ore. PUC December 9, 1996).

8. Id.

9. Consolidated Petitions of AT&T Communications of the Midwest, Inc., MCImetro Access Transmission Services, Inc., and MFS Communications Company for Arbitration with US West Communications, Inc. Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996, Docket No. P442, 421/M-96-855; P-5321, 421/M-96-909; P-3167, 421/M-96-729, 1996 Minn. PUC LEXIS 161 at *171 (Minn. PUC December 6, 1996).

IV. FAILURE TO COMPENSATE CLECs FOR ISP TRAFFIC IS ANTICOMPETITIVE AND DISCRIMINATORY

A. LEC Refusal to Pay Transport and Termination for ISP Traffic Is Inconsistent with the LEC's Own Treatment of these Customers

As stated above, LECs treat ISPs as local exchange service customers in accordance with Commission decisions. This result has practical implications for characteristics of customer calls to ISPs. For example, the calling party need only dial a local LEC number to reach the ISP end user, and that party is billed for placing the call under the LEC's local tariff. ISP customers of LECs gain access to the public switched network under the LEC's local business tariff.[10] At bottom, the call is actually routed to the ISP premises pursuant to local service arrangements, regardless of whether the call is terminated by the LEC or the CLEC. For example, when the LEC delivers an ISP call to a CLEC (which the CLEC delivers to its ISP customer), it does so in a manner that is consistent with local call delivery, rather than long distance call delivery. Specifically, the LEC routes the call over local interconnection trunk groups. Moreover, when these calls are delivered to a CLEC, the LEC uses the type of signalling that is associated with local calls.

In addition, Bell Atlantic's recent amendment to its Comparably Efficient Interconnection ("CEI") plan illustrates the LEC understanding that the call to an ISP premises is a local call. Bell Atlantic's amendment states that it will

---

10. See Access Charge Order at ¶ 342.

> contract to use, under its own name, the services of an unaffiliated third party vendor to provide certain dial-up Internet access functions. . . . For dial-up access, the end user will place a call to the Bell Atlantic Internet hub site . . . Bell Atlantic's vendor will subscribe to <u>local telephone services</u> -- either standard business line or ISDN -- to receive the call. In providing this service, Bell Atlantic will subscribe only to generally available local telecommunications services.[11]

Thus, Bell Atlantic agrees that the local services that an ISP would need to serve its customers typically are to be provided under local tariffs.

Because the consumers' calls to ISP end users are local, as demonstrated by the LECs' treatment of the calls, reciprocal compensation agreements should apply to ISP traffic, as required under Section 251(b)(5) of the Communications Act.[12] Any other treatment of these calls would be discriminatory. Essentially, LECs would be permitted to treat calls to its ISP customers as local — <u>i.e.</u>, the calls would be rated according to local business tariffs. However, if the ISP is a customer of the CLEC, reciprocal compensation agreements governing local traffic would not apply.

B. Denial of Appropriate Reciprocal Compensation to CLECs Impedes Competitive Efforts

Competitors in the local exchange service market will respond logically to marketplace incentives. During the arbitration process, for example, CLECs

---

11. "Amendment to Bell Atlantic CEI Plan to Expand Service Following merger with NYNEX," CCB Pol. 96-09, filed May 5, 1997 at 2-4 (Emphasis supplied).

12. 47 U.S.C. § 251(b)(5); <u>see also</u> <u>Implementation of the local Competition Provisions in the Telecommunications Act of 1996</u>, 11 FCC Rcd 15499, 16013, <u>appeal pending sub nom.</u> <u>Iowa Utils. Bd. v. FCC</u>, 109 F.3d 418 (8th Cir. 1996).

promoted a bill-and-keep or flat-rated port reciprocal compensation arrangement for the transport and termination of local traffic. LECs fought such proposals vigorously and advocated instead minutes-of-use compensation arrangements. In the states where LECs prevailed on this issue, the CLECs responded with practical business judgment. CLECs determined that these LEC-sponsored arrangements permitted CLECs to compete for ISP customers, and priced their competitive services accordingly.

Now, however, efforts essentially to rewrite existing reciprocal compensation agreements so that these local calls are not compensated may serve as a barrier to entry into the local market. In effect, if states approve the LEC analysis that calls to ISP customers — alone among all other local calls — are not included under reciprocal compensation arrangements, CLECs will be barred from carrying a discrete, but significant source of local traffic. This selective prohibition upon CLEC compensation and service may ultimately pose a violation of Section 253 of the Act.

Moreover, ISPs are an essential component to the growth of the "information superhighway," and ISP customers should have high quality, low cost competitive alternatives for connectivity with the public switched network. In this regard, it is sound public policy for CLECs to receive the proper incentives to carry customers' calls to ISP customers. On the other hand, if CLECs are denied compensation for terminating these local calls, competitive choices for service to ISP premises will be eliminated, and service for these customers would be solely in the hands of the incumbents. Such an outcome would represent a failure to advance the pro-competitive aims of the Telecommunications Act of 1996.

V. CONCLUSION

The Commission has a well-established policy providing that, as related to compensation, the local services furnished to ISPs are to be treated jurisdictionally as local intrastate services. Accordingly, the Commission should clarify that the termination of these calls to ISP customers constitutes local calls and should be subject to reciprocal compensation terms. Therefore, TCG urges the Bureau to affirm its position on this issue as requested by ALTS.

Respectfully submitted,

TELEPORT COMMUNICATIONS GROUP INC.

Teresa Marrero
Senior Regulatory Counsel - Federal
Two Teleport Drive
Staten Island, N.Y. 10311
(718) 355-2939

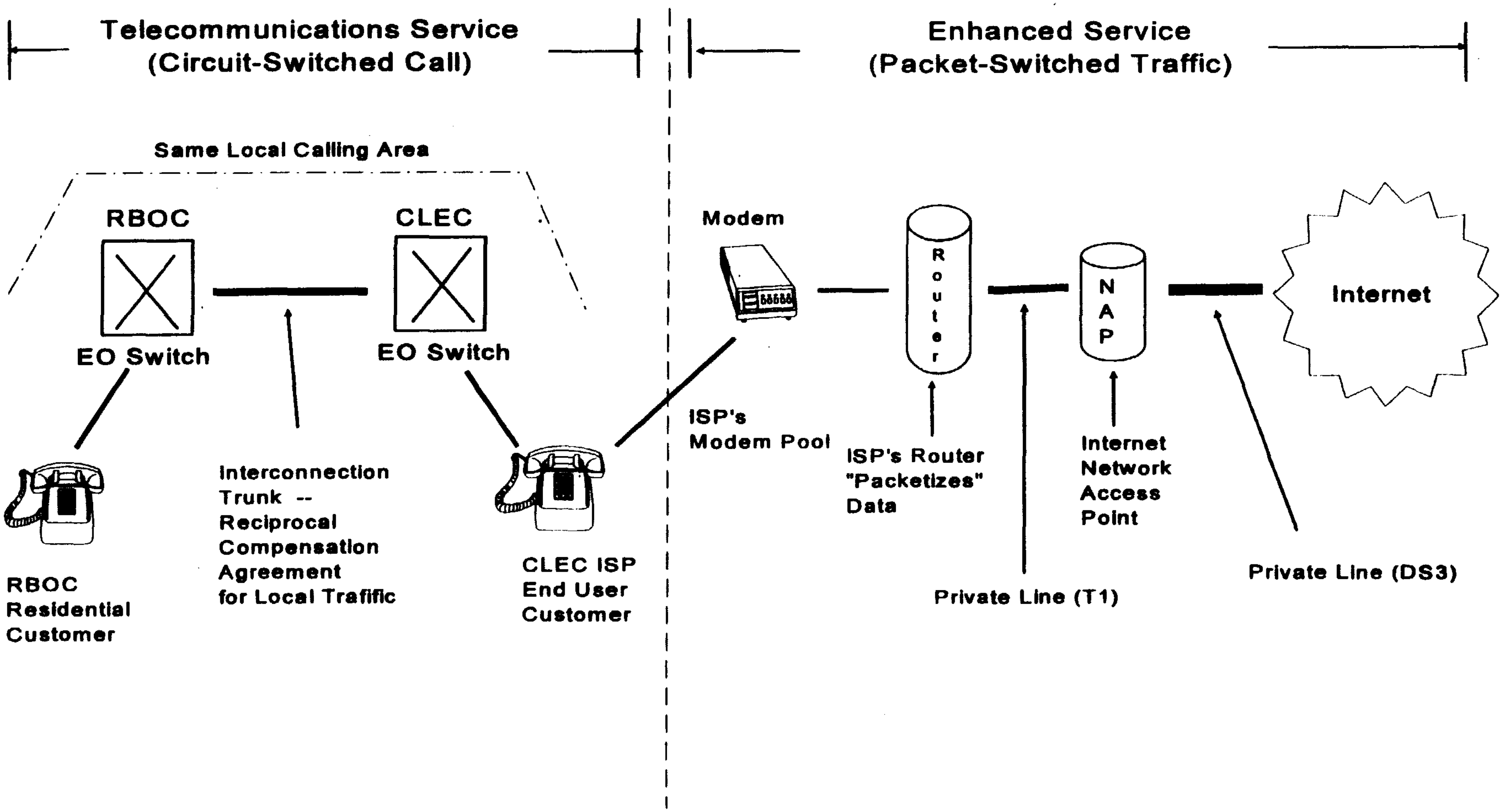
Its Attorney

Dated: July 17, 1997

EXHIBIT 1

Attachment

Internet Traffic Routing -- Distinguishing Between Telecommunications and Enhanced Service Components



Teleport Communications Group Inc.

CERTIFICATE OF SERVICE

I, Dottie E. Holman, do hereby certify that a copy of the foregoing Comments was sent by hand-delivery this 17th day of July, 1997, to the following:

William F. Caton
Secretary
Federal Communications
Commission
1919 M Street, NW, Room 222
Washington, DC 20554

Wanda Harris
Common Carrier Bureau
Federal Communications
Commission
1919 M Street, N.W., Rm. 518
Washington, D.C. 20554

ITS
2100 M Street, NW
Room 140
Washington, DC 20037

Dottie E. Holman
Dottie E. Holman